

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1791**

Katherina Theresa Bernhagen, petitioner,
Respondent,

vs.

Peter John Bernhagen,
Appellant.

**Filed September 2, 2008
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. DA27FA074358

Mark E. Mullen, Jensen, Mullen & McSweeney, P.L.L.P., 1350 Wells Fargo Plaza, 7900
Xerxes Avenue South, Bloomington, MN 55431 (for respondent)

Allan H. Caplan, Charles F. Clippert, Caplan Law Firm, P.A., 525 Lumber Exchange
Building, 10 South Fifth Street, Minneapolis, MN 55402 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and
Harten, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant argues that the evidence and findings are insufficient to support the
district court's issuance of an OFP to respondent. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

DECISION

Appellant Peter John Bernhagen (husband) challenges the sufficiency of the evidence and the district court's findings, arguing that neither support the district court's grant of respondent Katherina Theresa Bernhagen's (wife) petition for an order for protection (OFP) against him. We conclude that the findings are adequate and supported by the record.

"The decision to grant an OFP under the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 [], is within the district court's discretion." *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926 (Minn. App. 2006) (citing *Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005)). "A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law." *Id.* at 927. "We review the record in the light most favorable to the district court's findings, and we will reverse those findings only if we are 'left with the definite and firm conviction that a mistake has been made.'" *Id.* (quoting *Chosa*, 693 N.W.2d at 489). "We neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). "We will not reverse merely because we view the evidence differently." *Id.* And "[a]s a remedial statute, the Domestic Abuse Act receives liberal construction" in favor of the injured person. *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992).

I. District court's findings

The Minnesota Domestic Abuse Act defines “domestic abuse,” in relevant part, as “the infliction of fear of imminent physical harm, bodily injury, or assault.” Minn. Stat. § 518B.01, subd. 2(a)(2) (2006). Here, the district court recited wife’s testimony about a June 9 confrontation in which husband “approached [wife] close to her face and screamed at her in anger,” causing her fear; described a letter in which husband acknowledged scaring wife; and recited husband’s testimony that “he sees fear in [wife’s] face although he does not understand why she is fearful.” The district court found, based on wife’s credibility and husband’s admissions, that “[wife] has met her legal burden to prove by a preponderance of the evidence that domestic abuse has occurred.” The district court also noted that three days before the confrontation, husband took his rifle with him when he moved out of the homestead and that “[wife] became frightened when she saw that the rifle was gone.”

Husband argues that the district court failed to make findings, and that the evidence is insufficient to show, that he intended to cause wife fear, that harm was imminent, or that wife’s fear was reasonable. But the finding that wife proved that domestic abuse occurred encompasses an implicit finding on each of these factors. Though scant, we conclude that the district court’s findings are adequate and supported by the record.

Intent

Husband relies on *Kass v. Kass*, 355 N.W.2d 335 (Minn. App. 1984), to assert that the issuance of an OFP must be supported by some overt action to indicate that a person

intended to put the petitioner in fear of imminent physical harm. We stated in *Kass* that “the definition of ‘domestic abuse’ under Minnesota’s Domestic Abuse Act [] require[s] either a showing of present harm, or an intention on the part of appellant to do present harm.” 355 N.W.2d at 337. But in *Hall v. Hall*, we stated that neither the caselaw nor the statute “impose[s] a requirement of an overt *physical* act to support the issuance of” an OFP, concluding that “[a] verbal threat, depending on the words and the circumstances, can also inflict fear of imminent physical harm, bodily injury or assault.” 408 N.W.2d 626, 629 (Minn. App. 1987) (quotation marks omitted), *review denied* (Minn. Aug. 19, 1987). In *Hall*, we determined that husband’s threats—which included statements such as “you better stop f---ing with me; if you don’t stop f---ing with me you’ll end up in a box[,]” and “if you’re going to f--- around you’re going to get it[,]”—were “sufficiently specific and violent to support [wife’s] claim of fear of physical harm.”¹ *Id.* at 628-29.

In this case, wife’s petition stated that husband had “threatened to come to the house and throw petitioner out of the home.” He also told her: “if you don’t do what I want . . . if you don’t follow my plan things are going to get nasty,” and “if you keep pushing me away like this something’s going to happen . . . I don’t want to do something stupid.” Although husband argues that his statements are too vague to be threatening, we

¹ Husband cites *Hall* for the proposition that “[a]n act that does not otherwise seem abusive, such as verbal threats or indirect physical aggression, may be found to be abusive when viewed in the context of past abuse or threats.” While the *Hall* court found that husband’s threats were “even more serious when considered in the context of the past physical abuse, which in two instances required medical treatment,” it concluded that the threats alone were sufficient to support wife’s claims of fear. 408 N.W.2d at 629.

conclude that the totality of the circumstances, including husband's size, tone of voice, proximity to wife during the June 9 confrontation, his admission that he could "see[] the fear on [wife's] face" and knew that he had inflicted pain and suffering on her, and wife's testimony that she was afraid, are sufficient evidence from which to infer husband's intent to cause wife fear of harm. See *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989) (concluding that the evidence, viewed in its totality, was "sufficient evidence to infer husband's present intent to inflict fear of imminent physical harm, bodily injury or assault within the meaning of the Domestic Abuse Act").

Husband also relies on several cases in which this court reversed OFPs to argue that wife failed to show a present intent to inflict fear of harm. We do not find his argument persuasive in this case. In *Bjergum v. Bjergum*, 392 N.W.2d 604, 606-07 (Minn. App. 1986), and *Chosa*, 693 N.W.2d at 490, we reversed OFPs because the most recent incidents of abuse were over one year old, and because the record lacked other evidence that the abuser had a present intent to inflict fear of imminent harm. In *Andrasko v. Andrasko*, we reversed the OFP because there was no testimony whatsoever at the hearing about the allegations of abuse contained in the OFP petition. 443 N.W.2d 228, 230 (Minn. App. 1989).

By contrast, in this case wife testified that an incident which occurred within days of her filing the petition caused her fear that husband would harm her or himself. Wife testified that she remained fearful of husband and was still in fear of him at the time of the hearing, and husband acknowledged that he could see wife's fear despite his avowed lack of intention to cause fear. We defer to the district court's determinations that wife

was credible, and husband was not. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to district court credibility determinations).

Imminent harm

Husband further contends that his letter does not support wife's fear of imminent harm because it "clearly indicates [he] realized that he was causing his wife emotional pain only *after*" the confrontation occurred. Husband notes that, in his testimony, he acknowledged seeing that wife was afraid but he denied that his actions justified this fear because "[he] never intended to inflict . . . fear on anyone." But plainly, at the time of the confrontation, husband saw in wife's face that she was afraid of him, did nothing to dispel that fear, and, as asserted in wife's petition, continued to tell wife that he might "do something stupid" and that if she did not "follow [his] plan things are going to get nasty."² We conclude that the record supports the district court's implicit finding that wife was in fear of imminent harm.

Reasonable fear

Husband also argues that the evidence was insufficient to support the OFP because the district court did not find, and nothing in the record supports a finding, that wife's fear was reasonable. Husband cites *Braend*, 721 N.W.2d at 928, which held that to support extension of an existing OFP, continued fear of the abuser must be reasonable

² Although the district court, without objection by either party, attempted to limit testimony to the June 9 incident, wife testified that husband had been calling and getting more and more upset and that a couple of days prior to June 9, husband told her he did not want her to "back him into a corner" because he was afraid he was going to "do something stupid." She also testified that during the June 9 confrontation, husband was "saying [that] things were going to get nasty." Wife testified that as of June 9 she was concerned that husband would harm her, the children, or himself.

under the circumstances. Husband argues that common sense dictates that the reasonableness of the fear applies to all stages of the issuance of an OFP. In proceedings for an extension of an OFP, that the petitioner's fear is reasonable is only one of four alternative bases for granting the order. Minn. Stat. § 518B.01, subd. 6a (2006). The requirements set forth in this provision are less stringent and do not require a showing "that physical harm is imminent." *Id.* We agree, however, that common sense dictates that the fear of imminent harm required for issuance of an OFP must be reasonable.

We conclude that the district court's findings that wife was credible and that wife proved that domestic abuse occurred encompass an implicit finding that her fear was objectively reasonable. And the record supports a reasonable inference from wife's testimony that husband's proximity, agitation, escalating anger, screaming, and actual words reasonably caused her fear of imminent harm. Because we consider the evidence in the light most favorable to the district court's findings and give special deference to findings made upon conflicting evidence, *Sefkow*, 427 N.W.2d at 210, we conclude that the district court's implicit finding that wife's fear was reasonable is not an abuse of discretion.

Affirmed.